Davis-Bacon Compliance, Certified Payroll and contractor requirements

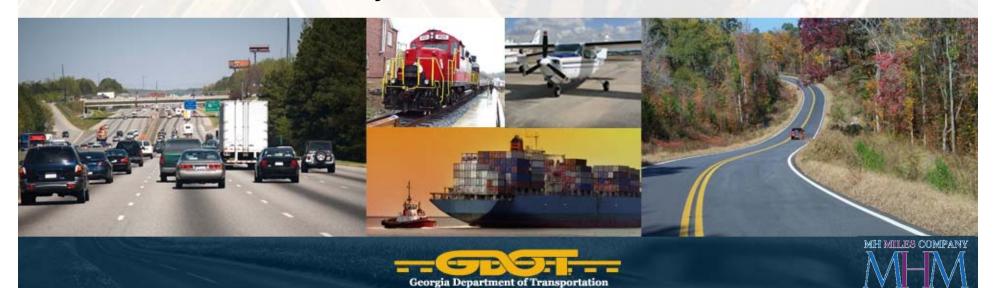
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2012 DBE Supportive Services "Blueprint for Success"
State Conference

"Strengthening & Expanding Your Business for Growth"

August 29, 2012

Emory Conference Center Hotel



OBJECTIVES

By the end of this course, participants will:

- Know the requirements of The Davis-Bacon Related Acts (DBRA)
- Understand the recordkeeping and reporting requirements
- Know when certified payrolls are required to be submitted to the contracting agency
- Know what information is required to be included on certified payrolls





The Davis-Bacon Act (DBA)

The DBA applies to:

- 1. Laborers or Mechanics
- 2. working on contracts in excess of \$2,000 for the construction, alteration and/or repair of
- 3. public buildings or public works, including painting or decorating
- 4. where the U.S. government or District of Columbia is a direct party to the contract

Note: Construction includes activities performed only on the site of the work such as preparation for construction (demolition, equipment and material set up, etc.), installation of materials, and post-construction clean-up.







The DBA continued

 The DBA requires that each covered contractor pay the laborers/mechanics on a weekly basis, no less than the wages and benefits that are prevailing in the area, as determined by the Department of Labor.

 A prime contractor is responsible for applying the appropriate DBA standards and DBA wage determinations to all subcontracts for work performed by laborers or mechanics at the site of the work for the project.





The Related Acts

- The DBRA are Federal statutes which authorize
 Federal assistance in the form of contributions,
 grants, loans, insurance or guarantees for programs
 such as the construction of highways, hospitals,
 sewage treatment plants, housing complexes and
 airports.
- A DBRA will usually include language further that articulates the work that must be covered by the DBA prevailing wage requirements (as set by the Secretary of Labor)





Related acts (contd.)

 The American Recovery and Reinvestment Act is an example of a DBRA statute. The Recovery Act states that:

"Notwithstanding any other provision of law...all laborers and mechanics employed by contractors and subcontractors on funded directly by or assisted in whole or in part by and through the Federal Government pursuant to this Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor...





Related acts (contd.)

• In order to implement the Recovery Act requirement, the awarding federal agency or the agency providing funding assistance must first make the determination that DBA applies to the project, then must ensure that DBA clauses and wage determinations are made applicable to the performance of the work.





The Copeland "Anti-Kickback" Act

- The Copeland Act makes it illegal to induce any person working on a federal contract or on a federally financed or assisted construction project to "give up any part of the compensation to which he is entitled under his contract of employment".
- Violation of this act is punishable by a fine or by imprisonment up to five years, or both.









The Contract Work Hours and Safety Standards Act (CWHSSA)

- The CWHSSA applies to:
 - 1. Certain federally funded or federally assisted contracts (contracts for services, construction or supply)
 - 2. that are in excess of \$100,000
 - 3. and may involve the employment of mechanics or laborers (including watchmen and guards) upon a public work

Note: The CWHSSA does not apply to contracts where the federal assistance is solely in the form of a loan guarantee or insurance





Requirements

 Contractors and subcontractors on prime contracts in excess of \$100,000 are required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one-half times their basic rates of pay for all hours over 40 worked on covered contract work in a workweek.





Recordkeeping & Reporting Requirements

 Covered contractors and subcontractors are required to pay employees weekly and to submit weekly certified payroll records to the contracting agency.

 The prime contractor is responsible for the timely submission of certified payrolls for all subcontractors. They are also obligated to inform all subcontractors of the labor provisions of the contract.





U.S. Department of Labor

PAYROLL



Wage and Hour Division

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)

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NAME OF CONTRACTOR OR SUBCONTRACTOR							ADDRESS								OMB No.: 1235-0008 Expires: 01/31/2015			
PAYROLL NO. FOR WEEK ENDING							PROJECT AND LOCATION							PROJECT OR CONTRACT NO.				
(1)	(2)	1100			AND DA	TE		(5)	(6)	(7)			DED	(8) UCTIONS			(9)	
NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER! OF WORKER	NO OF WITHHOLOWS EVENIPTIONS	WORK CLASSIFICATION	OT, ORS	HOURS	WOR	KED EA	ACH DA	VY	TOTAL	RATE OF PAY	GROSS AMOUNT EARNED	FICA	WITH- HOLDING TAX			OTHER	TOTAL DEDUCTIONS	NET WAGES PAID FOR WEEK
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors performing work on Federally financed or assisted construction contracts to respond to the information collection contractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer





Date			
		(b) WHERE FRINGE BENEFITS ARE PAID IN	CASH
(Name of Signatory Party)	(THO)		ited in the above referenced payroll has been paid
do hereby state:	(Title)	basic hourly wage rate plus	an amount not less than the sum of the applicable the amount of the required fringe benefits as listed
(I) To all and a control of the cont		In the contract, except as no	ted in section 4(c) below.
(1) That I pay or supervise the payment of the person	ons employed by	(c) EXCEPTIONS	
	on the		
(Contractor or Subcont	ractor)	EXCEPTION (CRAFT)	EXPLANATION
	; that during the payroll period commencing on the		
(Building or Work)			
day of and endir	ng the day of		
all persons employed on said project have been paid to been or will be made either directly or indirectly to or on to			
(Contractor or Subcor	from the full		
(Contractor of Subcor	iracion)		
weekly wages earned by any person and t hat no deduc			
from the full wages earned by any person, other than per 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labo			
63 Start. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 31-			
		REMARKS:	
(2) That any payrolis otherwise under this contract			
correct and complete; that the wage rates for laborers or			
applicable wage rates contained in any wage determined classifications set forth therein for each laborer or mechanisms.			
(3) T hat any apprent ices em ployed in t he above			
apprenticeship program regis tered with a St. ate appre Apprenticeship and Training, United States Department of			
State, are registered with the Bureau of Apprenticeship a			
(4) That:	A ADDROVED DI ANO FUNDO OD DOGGOVICO	NAME AND TITLE	SIGNATURE
(a) WHERE PRINGE BENEFITS ARE PAID TO	O APPROVED PLANS, FUNDS, OR PROGRAMS		
- In addition to the basis hourly wa	ge rates paid to each laborer or mechanic listed in		
	lyments of fringe bene fits as listed in the contract	THE WILLFUL FALSIFICATION O FANY O FT HE ABO V	E ST ATEMENTS M AY SUBJ ECT T HE CO NTRACTOR O
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employees, except as noted in sec	ction 4(c) below.	31 OF THE UNITED STATES CODE.	

2012 DBE Supportive Services "Blueprint for Success" State Conference



Recordkeeping & Reporting Requirements (contd.)

- Records to be maintained include:
 - Employees' name, address, and identification number
 - Each employee's work classification(s)
 - Daily and weekly numbers of hours worked





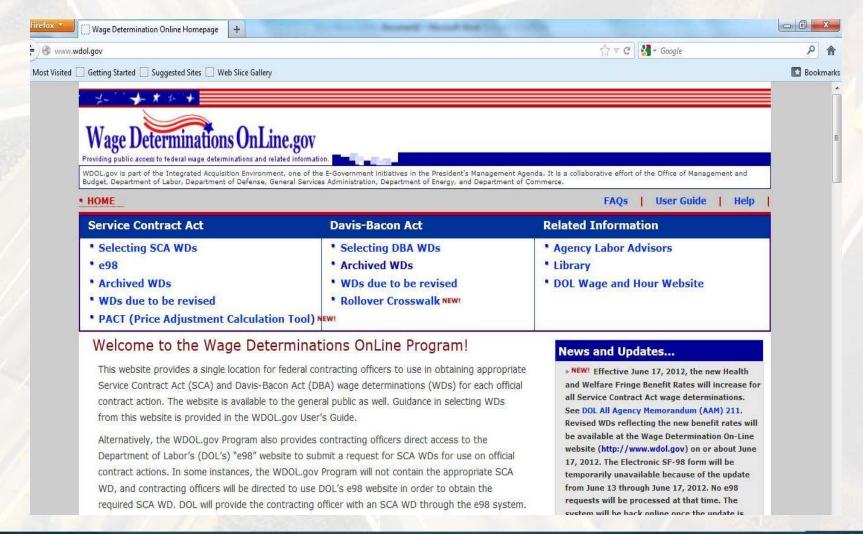
Recordkeeping & Reporting Requirements (contd.)

- Hourly rates of pay, including rates of contributions or costs anticipated for fringe benefits or their cash equivalents
- Deductions made
- Actual wages paid





WAGE DETERMINATIONS







Recordkeeping & Reporting Requirements (contd.)

 If applicable, detailed information regarding various fringe benefit plans and programs, including records that show that the plan or program has been communicated in writing to the laborers and mechanics affected

 If applicable, detailed information regarding approved apprenticeship or trainee programs





Payroll Requirements

- Each payroll submitted must be accompanied by a "Statement of Compliance."
- Statements of Compliance are to be made on the form WH-347 "Payroll" (For Contractors Optional Use) http://www.dol.gov/whd/forms/wh347instr.htm or on any form with identical wording.





Payroll Requirements (contd.)

 Submission of "Statement of Compliance" must be completed within seven days after the regular pay date for the pay period.

• Each payroll report must be numbered, starting with "#1" as the first payroll submitted by the reporting contractor for the first week in which it employs covered workers on the site.





Payroll Requirements (contd.)

- The contractor, subcontractor or the authorized officer or employee of the contractor or subcontractor who supervises the payment of wages must sign the weekly statement.
- Under the DBRA, covered contractors must maintain payroll and basic records for all laborers and mechanics during the course of the work and for a period of three years thereafter.





Additional Payroll Information...

- Contractors may also be asked to submit, via survey, wage data that may be used by the Wage and Hour Division to determine the locally prevailing wage rates that will apply to workers on Davis-Bacon and DBRA-covered projects. The submission of wage data is encouraged, but voluntary.
- WD-10 Form, Report of Construction Contractor's Wage
 Rates

(http://www.dol.gov/whd/programs/dbra/wd10/index.htm) can be used for wage data submission.





Additional Payroll Information

 Falsification of certified payroll records or the required kickback of wages may subject a contractor or subcontractor to civil or criminal prosecution, the penalty for which may be fines of up to \$1000 and/or up to one year imprisonment for each false statement.





Things to Know...

- DBA requires a contractor to pay no less than the minimum wage and fringe benefit listed on the applicable wage determination for each covered hour worked, on a weekly basis.
- If a worker works at more than one classification in a single week, show each classification for the worker separately, along with hours worked and rate of pay (for each, respectively).





Things to Know... (contd.)

- Workers properly documented and employed as apprentices or trainees must:
- be reported as such with the classification in which they work.
- Provide supporting documentation proving workers enrollment in an approved program,
- and attach it to the first certified payroll, reporting their hours worked on the project.





Things to Know... (contd.)

 DBA has no overtime (OT) compensation requirements. However, most contractors performing work on these projects are required by FLSA and/or CWHSSA to pay OT compensation at time and one-half the worker's "regular rate of pay" for the hours worked in excess of 40 each week.





Reporting Fringe Benefits

on form WH-347:

- Contractors are obligated to report payments made to comply with the DBA fringe benefit requirement and the manner in which these payments were made
- Either cash paid in lieu of providing a fringe benefit plan and/or payments made to a plan that provides workers with benefits.





Reporting Fringe Benefits (contd.)

on form WH-347:

- If contractor pays all workers the required DBA fringe benefits in cash, in lieu of providing a benefit plan, the contractor must report the payment on the 1st page of the WH-347, in Column (6) "Rate of Pay" and column (7) "Gross Amount Earned."
- Contractor must also check Box (4)(b) on the second page of the form, indicating payment in cash in lieu of providing benefits.





Reporting Fringe Benefits (contd.)

on form WH-347

- If contractor pays the required DBA fringe benefit rate into a bona fide fringe benefit plan for all workers, the contractor should mark Box (4)(a) on the second page of the form.
- It is not necessary to show the amount paid into these plans on the 1st page in column (6).





Reporting Fringe Benefits (contd.)

on WH-347 form:

- It is of the utmost importance that the contractor clearly show the method used to comply with DBA.
- Information that is confusing, incomplete or inaccurate will lead to further inquiries during payroll review and may result in a full investigation to ensure contractor compliance.





RESTITUTION

- Failure to pay the appropriate DBA wages and fringe benefits will result in...
 - Contractor being immediately contacted and required to pay full restitution to the workers.
 - Typically allowed a 30 day window to make required payment(s)
 - Contractor will also be required to submit a corrected payroll report showing evidence of full payment of (back) wages





RESTITUTION

Contract #: DCKA-****-C-xxxx

Contract Name: Insert name Contractor: Insert name

Prime __X__ or Subcontractor ____

Wage Determination Pay (calculation)

	Name	Number								
Employee:	JOHN SMITH	XXX-XX-	1							
Payroll Ending:	8/10/2012		-							
OT hours	Classification	Total Hours	Wage Rate	Wages Due	Fringe Rate	Fringe Due	OT Prem Rate	OT Due	w	D TOTAL
		A	В	C= A*B	D	E= A+D	F= B/2	OThours*F		
5	Cement Mason	25	27,15	678-75	6,47	161.75	13.575	67.875		
5	Truck Driver	25	17,5	437.5	2	50	8.75	43.75		
	total	50		1116.25		211.75		111.625	\$	1,439.63

WD PAY = \$ 1,439.63

Reported on Certified Payroll = (1,250.00)

RESTITUTION DUE = \$ 189.63





Common Mistakes

- Incomplete or inadequate payroll information
 - If contractor does not use the WH-347 form, they must still provide all required information
- Missing addresses and identifying worker number
- Contractor must report an ID number for each worker
 - or last four digits of Social Security Number if no other identification system is in use





Common Mistakes (contd.)

- When contractor reports worker classifications that are not listed on the DBA wage determination....
 - The contractor will be asked to either reclassify the worker in compliance with the listed classifications
 - Or submit a copy of the SF-1444 "Request for Approval of Additional Classifications" to DOL along with the certified payroll report.



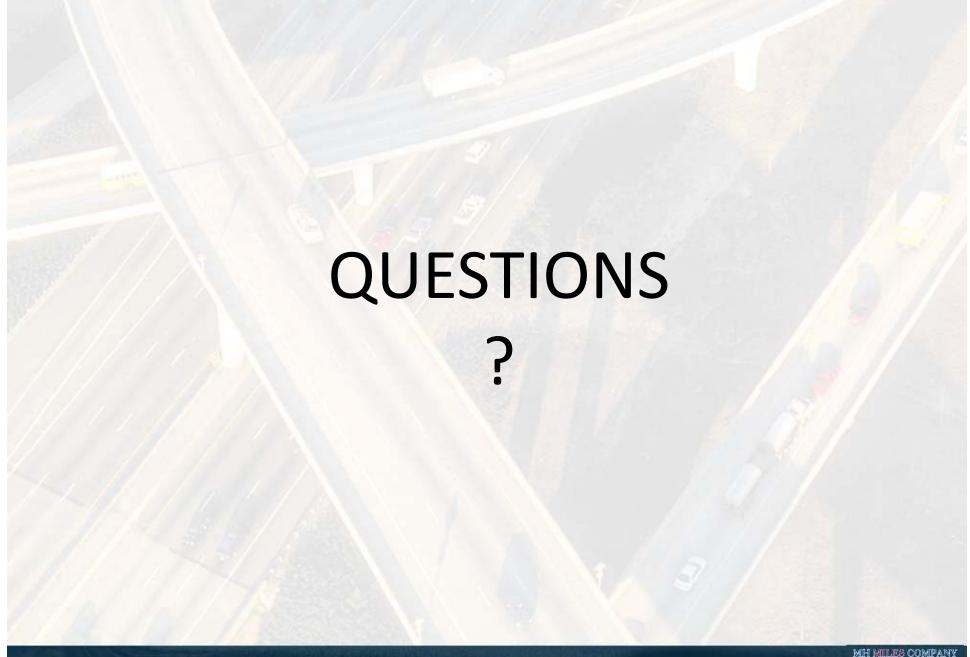


Failure to Comply

- If one fails to comply with the requirements stated above, they may be subject to one or more of the following consequences:
- Contract termination and debarment from future contracts for up to three years.
- Contract payments may be withheld to satisfy liabilities for unpaid wages and liquidated damages that result from Overtime violations of (CWHSSA) contract.







THANK YOU

MH MILES COMPANY, CPA PC



